

From: Lendrum, Jacqueline M (DEC)
To: [Arcaya, Alyssa](#); [Latessa, Sara H \(DEC\)](#)
Cc: [Coats, Andrea](#); [Arvizu, Christy](#); [Saporita, Chris](#)
Subject: RE: CAFO fact sheet language
Date: Tuesday, August 23, 2016 12:23:25 PM
Attachments: [removed.txt](#)

Alyssa – I'm still struggling to understand what information you are looking for and what the concern is with this practice. The addition of food waste into farm digesters is a common practice throughout the US and Europe. These structures are funded through a number of State and Federal programs including EPA's AgStar program. Food waste is a nutrient rich organic material that has a beneficial use in both the digester (reduction in greenhouse gas production and beneficial energy production) and as a fertilizer for crop production. In your comments you reference 40 CFR 122.42(e)(1)(v) – "ensure chemicals and other contaminants" as being prohibited from being put into the manure storage structure. There are a number of places where we prohibit the addition of "chemicals and other contaminants", specifically, the permit has a "Prohibition on Unauthorized Substances: Sanitary waste, unless authorized pursuant to Part 360; unused pesticides; and **any other material that cannot be properly handled at the CAFO**, is prohibited from being stored in waste storage areas or conveyed through the waste storage transfer structures, or land applied." This would prohibit a farmer from putting petroleum, unused pharmaceuticals, industrial wastes, etc. into the digester/storage structure and subsequently land applying them to cropland.

The permit also specifically defines "Food Processing Waste" to mean "waste resulting solely from the processing of fruits, vegetables, grains, dairy products, and related food products. It does not include waste from the processing of animal carcasses or parts. Food processing waste includes but is not limited to:

- a. vegetative residues that are recognizable as part of a plant, fruit or vegetable. Grape or apple pomace are considered recognizable.
- b. any solid, semisolid or liquid food sludge or residue that is nonrecognizable but identifiable by analysis or can be certified as solely a byproduct of plant, fruit, vegetable or dairy processing.

The permit requires compliance with NRCS NY313 and NY590 – the nutrient content of the wastes generated adhere to the requirements in these standards.

From NY590

"Nutrient values of manure, organic by-products, and biosolids must be determined prior to land application. Such analyses must include, at minimum, total nitrogen (N), ammonium N, total phosphorus (P) or P2O5, total potassium (K) or K2O, and percent solids, or follow Cornell University guidance regarding required analyses."

The permit also specifically requires

"Annual Manure and Other Waste Analyses

All CAFOs must analyze each individual land-applied waste source (manure, litter, food processing waste, digestate, and process wastewater) at least once annually for total nitrogen, ammonium, total phosphorus, total potassium,

chloride (if food processing waste is included in the waste), and percent solids in accordance with NRCS NY590 unless a more frequent sampling is deemed appropriate by the AEM certified planner. These records must be maintained on-site as part of the CNMP.”

So, other than pesticides, petroleum, pharmaceuticals or some other industrial waste, what contaminants are you looking to specifically prohibit? We could consider additional prohibitions if there is a specific substance you are concerned about – we could also consider additional analytical requirements if we are missing something.

From: Arcaya, Alyssa [mailto:arcaya.alyssa@epa.gov]
Sent: Wednesday, August 17, 2016 8:52 AM
To: Lendrum, Jacqueline M (DEC) ; Latessa, Sara H (DEC)
Cc: Coats, Andrea ; Arvizu, Christy ; Saporita, Chris
Subject: RE: CAFO fact sheet language

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Hi Jackie,

We’re looking for any data you may have on the chemical/biological/physical profile of the digester product where food processing wastes (and any other materials outside of the regulations) are added. We want to ensure that pollutants other than those contemplated by the regulations are not present/unregulated in the end product. I hope that provides some clarity.

Thanks,
Alyssa

From: Lendrum, Jacqueline M (DEC) [mailto:jacqueline.lendrum@dec.ny.gov]
Sent: Tuesday, August 16, 2016 3:54 PM
To: Arcaya, Alyssa <arcaya.alyssa@epa.gov>; Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>
Cc: Coats, Andrea <Coats.Andrea@epa.gov>; Arvizu, Christy <Arvizu.Christy@epa.gov>; Saporita, Chris <Saporita.Chris@epa.gov>
Subject: RE: CAFO fact sheet language

Alyssa – what kind of data are you looking for? Sample analysis for N & P? It is considered a manure source and has to meet the sample analysis requirements in NY590.

From: Arcaya, Alyssa [mailto:arcaya.alyssa@epa.gov]
Sent: Tuesday, August 16, 2016 3:42 PM
To: Latessa, Sara H (DEC) <Sara.Latessa@dec.ny.gov>
Cc: Coats, Andrea <Coats.Andrea@epa.gov>; Arvizu, Christy <Arvizu.Christy@epa.gov>; Saporita, Chris <Saporita.Chris@epa.gov>; Lendrum, Jacqueline M (DEC) <jacqueline.lendrum@dec.ny.gov>
Subject: RE: CAFO fact sheet language

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Hi Sara,

Thank you for the quick response. We’ll take a look and get back to you. In the meantime, we’re trying to resolve our comments on the issue of food waste and whey in the digesters at the CAFOs. In order to help us further understand the digester process that NY is utilizing, it would be helpful to have some data on the digestate product. Do you have data from some facilities that use this process that you could send to us?

Thanks again for your help,
Alyssa

From: Latessa, Sara H (DEC) [<mailto:Sara.Latessa@dec.ny.gov>]

Sent: Tuesday, August 16, 2016 1:28 PM

To: Arcaya, Alyssa <arcaya.alyssa@epa.gov>

Cc: Coats, Andrea <Coats.Andrea@epa.gov>; Arvizu, Christy <Arvizu.Christy@epa.gov>; Saporita, Chris <Saporita.Chris@epa.gov>; Lendrum, Jacqueline M (DEC) <jacqueline.lendrum@dec.ny.gov>

Subject: FW: CAFO fact sheet language

Alyssa,

See revised language below. I also provided responses to your comments in red below. Please let us know your thoughts on the revised language...

Thank you!,

Sara

Public Participation – Annual Nutrient Management Plan (ANMP): In order to address the requirements outlined in the *Waterkeeper Alliance, Inc. et al. v. EPA 399 F3d 486 (2005)* (“*Waterkeeper* decision”) and the 2012 consolidated federal CAFO Rule, the Department developed a consolidated version of the Comprehensive Nutrient Management Plan (CNMP) termed the Annual Nutrient Management Plan (ANMP). This ANMP creates a workable solution for farmers while complying with the new Rules.

The *Waterkeeper* decision stated that the terms of the nutrient management plans are effluent limitations that are subject to public comment and hearing that must be reviewed and approved by the permitting authority. Eligibility for this permit is contingent on having a CNMP written by a certified planner to meet the technical standards set by United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) (available at:

<https://efotg.sc.egov.usda.gov/toc.aspx?CatID=10980>) . These technical standards set the effluent limitations included in each farm-specific CNMP. The ANMP provides an outline of the farm-specific effluent limitations in a consolidated format to allow for manageable review by both the public as well as the Department. For example, NRCS Standard NY 590, describes the protocol that must be followed when sampling fields which will receive applications. The results of those samples, which include the Nitrogen Leaching Index Rating and Phosphorus Runoff Index Rating for each field, are included in the ANMP. These results are used to calculate the application rates for each field, which also made available in the ANMP. The public is given opportunity to comment on and request a hearing on the effluent limitations when the general permit is public noticed, and the farm specific elements, when the ANMP is submitted.

The farm-specific ANMP must be submitted with the Notice of Intent for coverage under this permit and the availability of both will be publically noticed and comments received for 30 days. If, at any time throughout the permit term, the individual farm proposes an action that does not meet NRCS standards (ie. the effluent limitations established in the permits) then a revised ANMP must be submitted, made available to the public for comment and an opportunity for hearing provided. Part IV.F. of the permit describes these actions that warrant submission of a revised ANMP.

Although the ANMP meets the minimum requirements outlined in the *Waterkeeper* decision, it only provides for anticipated compliance. In order to provide reasonable assurance that the anticipated compliance was fulfilled, CAFO owner/operators in

NY are required to submit an Annual Compliance Report (ACR) at the end of each year which requires certification by the owner/operator that they complied with the terms of the permit, the farm-specific effluent limitations and provides an opportunity for the owner/operator to outline any changes made to the CNMP throughout the year. These reports are submitted to the Department by March 31st of each year and are available to the public through the Freedom of Information Law (FOIL) process (see: <http://www.dec.ny.gov/public/373.html>). This system of “before and after” reporting, provides for transparency of the farms operations and allows for the Department, as well as the public, to gain a more complete picture of compliance. All forms related to the CAFO program, including the ACR, can be found at: <http://www.dec.ny.gov/permits/55373.html>.

2012 CAFO Rule adherence: The 2012 consolidated federal CAFO Rule requires owners/operators of CAFOs to indicate in their CNMP which nutrient application methodology they are following in order to provide reasonable assurance that there will be appropriate agricultural utilization of nutrients in the manure, litter or process wastewater applied to their land base. Specifically, the Rule requires adherence to either a Linear Method or a Narrative Method as described in 40 CFR 122.42(e)(5). In NY, these methods are combined to form the NRCS Standard NY 590 which incorporates Cornell’s Nutrient Guidelines, including the NY Nitrate Leaching Index and the NY Phosphorus Runoff Index, and ensures appropriate agriculture utilization of nutrients. The farm-specific field-by-field requirements set by NY590 are required to be followed by all permitted CAFOs in NY and are described in the ANMP which is available to the public upon request.

Sara H. Latessa

Environmental Program Specialist, Division of Water

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From: Arcaya, Alyssa [<mailto:arcaya.alyssa@epa.gov>]

Sent: Monday, August 15, 2016 4:43 PM

To: Latessa, Sara H (DEC); Lendrum, Jacqueline M (DEC)

Cc: Arvizu, Christy; Coats, Andrea; Saporita, Chris

Subject: CAFO fact sheet language

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Sara and Jackie,

Thank you for sending revised language to us and apologies for the delay in sending our feedback to you. Below please find our responses below the text you sent in blue. On Attachment C, we do not have any substantive comments, though we do recall suggesting a statement or check box that indicates that the ANMP and the Annual Compliance Report are publically available.

Sara, Christy will also be following up with you separately about a sample ANMP- it appears that you may have tried to send her a message that didn’t make it through our system. Once we have a chance to take a look at this, it may help us resolve some issues. With just the ANMP template to go on, it seems that, as an abbreviated version of the CNMP, the ANMP will be necessarily be lacking

some of the detail required in a CNMP. This detailed, site-specific information is what constitutes site-specific limitations. If this isn't required in the publically available ANMP, it makes it difficult for farms to be held accountable for those limitations.

We'll also be following up with you with more definitive information about the digester issue, hopefully this week.

I also wanted to touch base with you and Jackie about the potential for another in person meeting to look at a revised draft. You had asked us for a summary of the comments that still remain unresolved, but without a document to look at, we're not really able to provide that with any certainty. Please think about what would be doable on your end and we can discuss.

Finally, I just want to clarify that we reserve final comment on all revisions until we receive a complete proposed permit and have had a chance to review it thoroughly.

Thanks again,

Alyssa

Alyssa Arcaya

Chief, NPDES Section

Clean Water Division, EPA Region 2

212- 637-3730

“Public Participation – Annual Nutrient Management Plan (ANMP): In order to address the requirements outlined in the *Waterkeeper Alliance, Inc. et al. v. EPA* 399 F3d 486 (2005) (“*Waterkeeper* decision”) and the 2012 consolidated federal CAFO Rule, the Department developed a consolidated version of the Comprehensive Nutrient Management Plan (CNMP) termed the Annual Nutrient Management Plan (ANMP). This ANMP creates a workable solution for farmers while complying with the new Rules.

The *Waterkeeper* decision stated that the terms of the nutrient management plans are effluent limitations that are subject to public comment and hearing that must be reviewed and approved by the permitting authority. Eligibility for this permit is contingent on having a CNMP written by a certified planner to meet the technical standards set by United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS). These technical standards set the effluent limitations included in each farm-specific CNMP. The ANMP provides an outline of the farm-specific effluent limitations in a consolidated format to allow for manageable review by both the public as well as the Department. The public is given opportunity to comment on and request a hearing on the effluent limitations when the general permit is public noticed, and the farm specific elements, when the ANMP is submitted.

The farm-specific ANMP must be submitted with the Notice of Intent for coverage under this permit and the availability of both will be publically noticed and comments received for 30 days. If, at any time throughout the permit term, the individual farm proposes an action that does not meet NRCS standards (ie. the effluent limitations established in the permits) then a revised ANMP must be submitted, made available to the public for comment and an opportunity for hearing provided. Part IV.F. of the permit describes these actions that warrant submission of a revised ANMP.

Although the ANMP meets the minimum requirements outlined in the *Waterkeeper* decision, it only provides for anticipated compliance. In order to provide reasonable assurance that the anticipated compliance was fulfilled, CAFO owner/operators in NY are required to submit an Annual Compliance Report (ACR) at the end of each year which requires certification by the owner/operator that they complied with the terms of the permit, the farm-specific effluent limitations and provides an opportunity for the

owner/operator to outline any changes made to the CNMP throughout the year. This system of “before and after” reporting, provides for transparency of the farms operations and allows for the Department, as well as the public, to gain a more complete picture of compliance.

How is it clear to the public that they can view/obtain the ACRs to get this “before and after” picture, which provides transparency and provides for a more complete picture of compliance? **Sentence added stating ACR are due to the Department by March 31st each year and are available to the public upon request.** More generally, we suggest that any outside references, including NRCS standards, be accompanied by a link to the appropriate website. **Website links added to the fact sheet.** In the case of references to site-specific documents like the ACR, DEC should include information about how the public can access these documents. **Link to FOIL webpage added.**

2012 CAFO Rule adherence: The 2012 consolidated federal CAFO Rule requires owners/operators of CAFOs to indicate in their CNMP which nutrient application methodology they are following in order to provide reasonable assurance that there will be appropriate agricultural utilization of nutrients in the manure, litter or process wastewater applied to their land base. Specifically, the Rule requires adherence to either a **Linear Method or a Narrative Method as described in 40 CFR 122.42(e)(1)(viii).** In NY, these methods are combined to form the NRCS Standard NY 590 which meets this federal requirement and is required to be followed by all permitted CAFOs. The farm-specific field-by-field requirements set by NY590 are described in the ANMP and are available to the public upon request.

The yellow highlighted section references the wrong citation in the Federal CAFO rule. The terms of the nutrient management plan are defined in 122.42(e)(5). Changed reference. The highlighted citation references 9 key elements of the NMP, including establishing protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater. The terms of the nutrient management plan should be made clear to both the permittee and the public, as well as the nutrient application methodology and how it relates to the 2012 Federal CAFO Rule (e.g. linear or narrative approach). As such, the terms of the nutrient management plan should be more clearly explained in the fact sheet. As it is currently drafted, it is not clear how NY590 and the permit clearly explain the linear vs. narrative approach. More generally, because the land application procedures have be farm-specific in order to be meaningful and enforceable, a reference to general standards like NY590 does not serve as an effective effluent limit. **In addition to the reference to the general standard, the fact sheet also describes how that general standard is used to create the farm specific Comprehensive and Annual Nutrient Management Plans. Added an example of how the process works....**

We also feel that the relationship between NY590 and Cornell’s guidelines should be more clearly explained in the fact sheet. The burden should not be on the public to study Cornell’s guidelines to understand what’s required of a given CAFO. **Added a clarifying sentence.**